

# UNITED STATES COURT OF CLAIMS.

---

## ARGUMENT IN THE CASES OF

THOMAS T. CANNON Adm'r. of LUKE CANNON.

THOMAS CROMWELL " WM. TOWSON.

HARVEY MITCHELL " PETER JOHNSTON.

JOHN B. CARRINGTON " GEO. CARRINGTON.

THOMAS S. FLOURNOY " JOHN SCOTT.

JOHN COBURN " JNO. B. CUTTING.

BALDWIN " CORNELIUS BALDWIN.

VS.

## THE UNITED STATES,

DELIVERED

BY EDWARD C. CARRINGTON, ESQ.,

JUNE 5th, 1857.

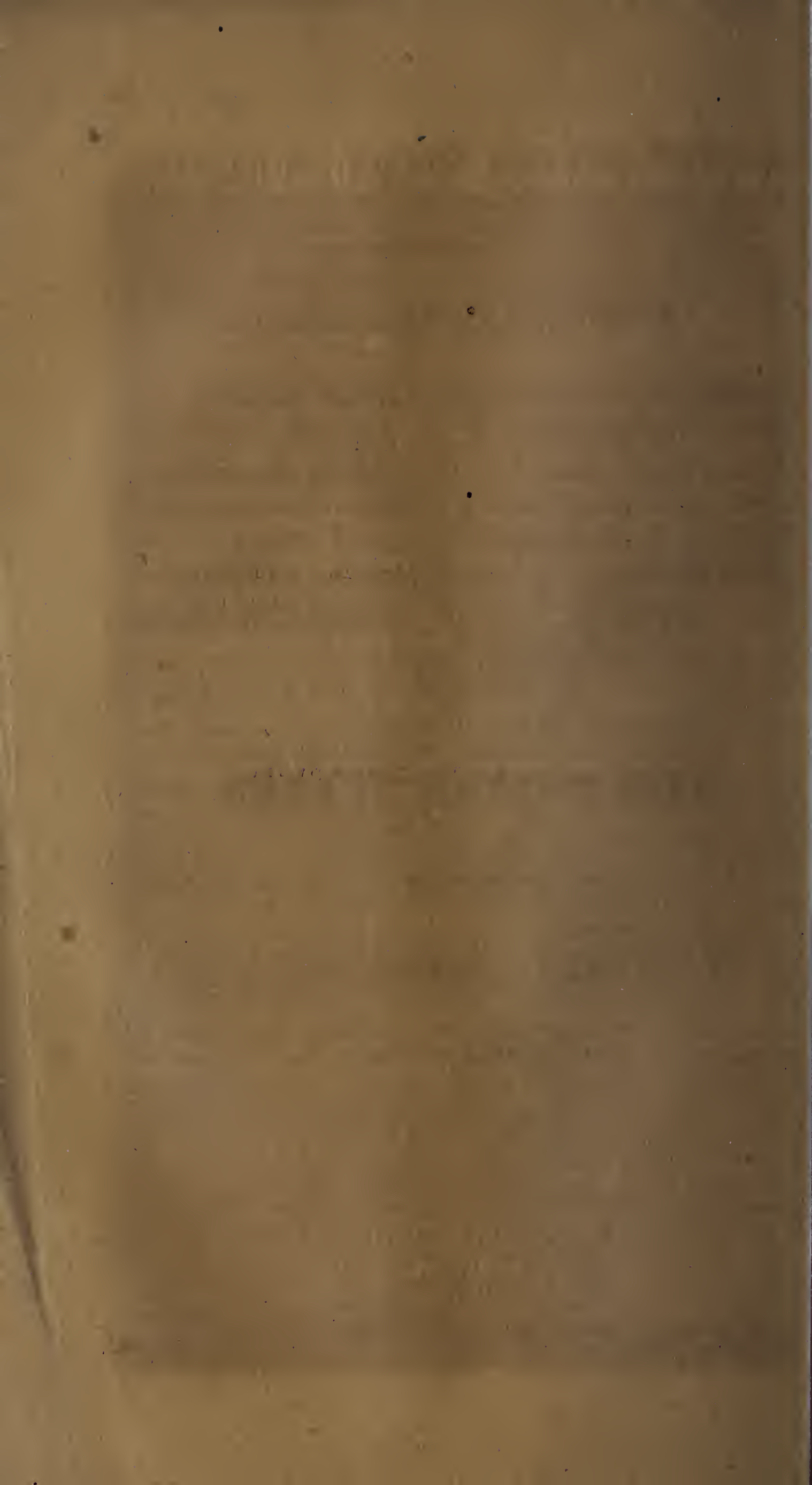
*Recd. Feb. 27. B. Case*

---

WASHINGTON:

ROBERT A. WATERS, PRINTER.

1857.



# UNITED STATES COURT OF CLAIMS.

---

## ARGUMENT IN THE CASES OF

THOMAS T. CANNON Adm'r. of LUKE CANNON.

THOMAS CROMWELL “ WM. TOWSON.

HARVEY MITCHELL “ PETER JOHNSTON.

JOHN B. CARRINGTON “ GEO. CARRINGTON.

THOMAS S. FLOURNOY “ JOHN SCOTT.

JOHN COBURN “ JNO. B. CUTTING.

BALDWIN “ CORNELIUS BALDWIN

vs.

## THE UNITED STATES,

DELIVERED

BY EDWARD C. CARRINGTON, ESQ.,

JUNE 5th, 1857.

---

WASHINGTON:

ROBERT A. WATERS, PRINTER.

1857.

# ERRATA.

- Page 4, twenty-fifth line from top, read *did not receive* for "did receive."
- " 7, third line " " *revolution* for "revolutionary."
- " 7, sixth line from bottom " *accepting* for "excepting."
- " 8, thirteenth line from top " *consent* for "contest."
- " 10, fifth line " " *import* for "impart."
- " 19, twentieth line from bottom, read *officer* for "veteran."
- " 29, eighteenth line from top, read *funded* for "founded."
- " 35, fourth line from bottom, " *a party* for "the plaintiff."
- Read *negotiable* for "negociable."



## ARGUMENT BEFORE U. S. COURT OF CLAIMS.

—o—

May it please the Court: As a general proposition, the Government is amenable to no legal process. No citizen can appear before a court of justice, and, as a matter of right, demand the enforcement of any contract against the Government, however solemn its sanctions, and however binding upon the clearest principles of law and equity. But I take it for granted, that this court has been established for the express purpose of adjudicating questions of difference between the Government and citizens of this country, and that, invested with both legal and equitable jurisdiction, in the exercise of judicial authority, its judgment will be controlled solely by principles of law and equity; any other view of your duty, I humbly apprehend, would be inconsistent with the dignity and honor of your position. I submit these reflections, because the impression with many seems to be, that this high tribunal is merely an investigating committee, without any fixed rule of action, except congressional precedents, abstract notions of justice, and a *strong* desire to protect the Treasury against heavy demands, however just, legal, and equitable. But I apprehend that I address a *judicial* tribunal, whose rule of decision is the law of the land, and I propose, therefore, to discuss this question as I would every other question of dollars and cents before any court having both legal and equitable jurisdiction, and in this view, I come easily to the conclusion, that those whom I represent are entitled, upon every principle of law and equity, and justice, to the entire claim presented in this petition, to which I now invite the attention of the court :

### COURT OF CLAIMS—PETITION.

THOMAS T. CANNON vs. THE UNITED STATES.

*To the Honorable the Judges of the Court of Claims.*

The petition of Thomas T. Cannon of Prince Willam County, State of Virginia Administrator de bonis non of the estate of Luke Cannon deceased, late of said County and State, respectfully rep-



resents, that the said Luke Cannon entered the military service of this country in the year 1776, as ensign, and was subsequently commissioned a Lieutenant of Infantry in the 4th Regiment of the Virginia Continental line, in which capacity he served to the end of the War of the Revolution between this country and Great Britain, and was, with his regiment, mustered out of service in November, 1783, as will appear by reference to the records in the Third Auditors Office of the United States Treasury Department, and the certificate of the Secretary of the commonwealth of Virginia herewith presented, marked B, and that, in consideration of said services, he was entitled to demand and receive of the Government of the United States, under and by virtue of a Resolution of the Old Congress of 21st October, 1780, the half pay of a Lieutenant of Infantry for life, (see Journal of Congress of that date,) and also under and by virtue of a Resolution of Congress of 3d June, 1784, to demand and receive interest on the said half pay, as the payments fell due, and also interest on the aggregate amount of said half pay and interest as aforesaid, from the time of the said Luke Cannon's death, until allowed, as will appear by the annexed account, marked A, which is prayed to be read as part of this petition.

And your petitioner further alleges, that the said Luke Cannon received certain certificates purporting to be commutation certificates, worth \$1,600, but which were, in point of fact, not worth one-eighth of that amount, to wit, the sum of \$200, and that he did receive the same as a commutation, compromise, or satisfaction of his claim under the resolution of October 21st, 1780—but that he accepted it because Congress had passed a resolution, to wit, the resolution of March 22d, 1783, declaring that he should accept that amount in lieu of half pay for life, thereby leaving him no alternative, but to accept that amount or get nothing for his services. And your petitioner further alleges, that the said Luke Cannon did not give his consent, either directly or indirectly, to the passage of the resolution of March 22, 1783—that he was not consulted as an individual, said resolution expressly precluding him from that privilege—that he was not consulted as an officer, as clearly appears from the terms of said resolution, which employs the following language, to wit: “provided it be at the option of the lines of the respective States and not of officers, individually, in those lines to accept or refuse the same,” and from what your petitioner further alleges to be true—that the sense of said lines was never, in point of fact, taken at all, or if so, was never taken according to the true intent and meaning of said resolution, many of the regiments having been reduced and their officers on furlough, at their respective homes, at the time of its passage. And that if the vote of any of said regiments was taken, the commanding officer thereof assumed to speak for all the subordinate



officers, of whom the said Luke Cannon was one, without any authority from them, and that his vested right to half-pay for life by virtue of the resolution of October. 21st 1780, and the value of his services upon the faith thereof were thus commuted as aforesaid, without his knowledge or consent, and by persons not authorized by him so to do, either directly or indirectly, and that he accepted the said commutation certificates under duress, when there was no alternative left him, but to take them or nothing for his services as aforesaid. Nor was he one of the officers of the line alluded to in said resolution, as having transmitted a memorial to Congress, praying for the passage of said resolution—that said memorialists were certain field officers under the *immediate command* of General Washington, as said resolution expressly declares, who was at that time in Newburgh, State of New York, fourteen in number, to wit:

*New Hampshire.*—H. Knox, Major General; John Patterson, Brigadier General; J. Groaton, Colonel; John Crane, Colonel; H. Maxwell, Lieutenant Colonel.

*Connecticut.*—J. Huntington, Brigadier General; H. Swift, Col.; Samuel B. Wells, Colonel; Eban Huntington, Lt. Colonel.

*New York.*—P. Courtlandt, Colonel.

*New Jersey.*—John M. Cummings, Lieutenant Colonel.

*New Hampshire.*—William Scott, Major.

W. Eustis, General Hospital Surgeon; Moses Hazen, Brig. General. And that they were the only officers who ever did memorialize Congress upon this subject, as the Journals of Congress clearly show—there being only one such memorial, appearing upon the Journals of Congress to which the name of the said Luke Cannon was not appended.

And your petitioner further alleges, that the said commutation certificate, when it fell due, was not paid, principal and six per cent interest, but was commuted a second time into a stock bearing three per cent interest by the operation of the funding act of August 4th, 1790, which said stock was ultimately liquidated by a payment of about sixty cents in the dollar.

And your petitioner further represents, that no application has ever been made to Congress by the said Luke Cannon or his heirs, or by any one claiming through him, for the additional amount of half pay and interest thereon, due him from the Government, nor has he or they ever received any part of the compensation promised by the Resolution of 21st October, 1780, except so much as was realized from the Commutation Certificate of \$1600, and the additional sum of \$937 77 paid under the act of Congress of 15th May, 1828.

And your petitioner further represents, that the said Luke Cannon died in aforesaid County of Prince William, State of Virginia on the 7th February, 1829, leaving seven children, three of whom



now survive, to wit: your petitioner, Thomas T. Cannon and Edith H. Norvel, and one grand child, Margaret A Goods, wife of James Goods, who claims the share of her deceased father, Barnabus Cannon, all of whom now reside in the State of Virginia, and are the only persons interested in this claim, and they unite with your petitioner in praying that this case may receive at your hands such careful consideration as its merits demand and such decision made, as truth and justice require, and that your petitioner may have such other and further relief as his case, in view of all the circumstances, may require, and in duty bound will ever pray.

—o—

A.

*The United States, debtor To Thomas J. Cannon, administrator de bonis non of Luke Cannon, a Lieutenant in the Revolutionary War.*

To half pay for life by virtue of act of Congress 21st October, 1780, from the close of the war 1783 to the period of his death, 7th February, 1829, at the rate of \$160 per year, \$7,360 00

To aggregate amount of interest (allowed by act of Congress, 3d June, 1784,) on the said \$160, as the same became due up to the period of his death, 1829, - - - - - 10,377 60

17,737 60

Credit, by commutation pay received August 10, 1784, - - - - - \$1,600 00

Pension under act 15th May, 1828, - 937 77

2,537 77

Balance due, - - - - - 15,199 83  
with interest up to the time it may be allowed.

This paper presents the facts of the case, and the points of law upon which we rely are embodied in the following brief, which I will now proceed to read:

### UNITED STATES COURT OF CLAIMS.

*Thomas T. Cannon, Admr. de bonis non of Luke Cannon, dec'd.*

#### BRIEF FOR THE CLAIMANT.

It will be contended—

*First,* That under and by virtue of the resolutions of Congress of 21st October 1780, the said claimant is entitled, as administrator of Luke Cannon, deceased, late of Prince William county, State of



Virginia, to the half pay for life of a regularly commissioned lieutenant in the Virginia continental line during the War of the Revolutionary between this Country and Great Britian, from the year 1783 (being the time the said war ended, and the said Luke Cannon, retired from the service, having served until the close of the war in said capacity) up to the year 1822 (being the period of said Luke Cannon death,) upon the following grounds: That said resolution embodies a free, voluntary, fair, legal, and equitable contract between the government of this country and the officers of the Revolutionary army, including the said Luke Cannon, which was in good faith fully executed by the said officer, and which, therefore, Congress had no right to rescind or impair by any subsequent legislation, or in any other manner, without the free and voluntary consent of said officers, and that the said Luke Cannon never did, at any time, give his consent to release the said government from its obligation to him for the said services rendered by him upon the faith of said contract.

*Second*, That under and by virtue of the resolution of Congress of the 3d June, 1784, the said claimant is entitled to interest upon the said half-pay, as the payments fell due, upon the general principle of law and equity, that a person who is entitled to demand and receive of another a certain amount of money by the terms of a contract between them, which he has fairly and fully executed, is entitled to interest on the same from the time it fell due, until paid. And by virtue of express act of Congress, to wit, the resolution of June 3d, 1784.—(See opinion of Chief Justice Gilchrist in *Thomas H. Baird vs. United States*.)

*Third*, That the certificates purporting to be worth \$2,000, but only worth \$250 in money, paid by the said government to the said Luke Cannon, under and by virtue of a resolution of Congress the 22d March, 1783, was, and is only a satisfaction "*pro tanto*" of the said claim of the said claimant, upon the following grounds: that said resolution is tantamount to a repeal of the resolution of October 21, 1780, without the consent of the said officers of the Revolutionary army as individuals, including the said Luke Cannon which is nothing more or less than the arbitrary rescission of a contract by one party thereto, after it had been fairly and fully executed by the other party, without his assent, which is clearly illegal, inequitable, and unjust; that said resolution is unjust and unequal upon its face, and that said Luke Canon did not compromise his rights or the rights of said claimant under the said resolution of 21st October, 1780, by excepting the said certificate for \$1,600 under the said resolution of 22d March, 1783, because payment of part of an amount of money earned under a contract, at any time, does not discharge the debtor from his obligation to pay the balance, unless by a free, voluntary, fair, well-understood, legal, and equitable compromise, his creditor agreed



to receive it in full satisfaction of his whole claim, (see 2, Parsons on Contracts, 130 and notes.) And it is equally clear, that the payment of a certain sum in gross cannot defeat the vested right to an annuity earned under contract, unless by a free, voluntary, fair, well understood, legal, and equitable compromise between both parties:

But the acceptance of the said sum of money by the said Luke Cannon cannot, upon any principle of law or equity, be considered such a compromise, because there was no legal process by which he could enforce against the said government in his favor a compliance with the contract under the resolution of October 21, 1780. The resolution of March 22, 1783, was a law of his country, made without his contest, to be sure, but which he could not gainsay, and under which he was bound to take or lose the entire amount he had hardly and faithfully earned. And even if the said officers did give their assent to such a compromise, the offer to compromise was not in good faith fulfilled by the Government, for when the officers called for their money, or specie, at the Treasury of the United States, they were turned away with paper certificates, worth in gold and silver, on the day of their date, as the records abundantly show, only one-eighth of their nominal value. (See Senate's report of 3d January, 1829; Mr Madison's report of April 23 1783; the report of the Committee of the House of Representatives on Revolutionary Claims of 1810; Mr. Sergeant's report to the House of Representatives of the 10th of December, 1819; Mr. Burgess's report to the House of Representatives 1826; Mr. Johnson's report to the House of Representatives of 1818; Mr. Burgess's report to the House of Representatives of 1828; Senate report No. 164, first session, 32d Congress; Evan's report No. 7, first session, 34th Congress; letter of Gen Washington, dated Newburgh, June 18, 1783; Broom's report to House of Representatives of April 4, 1856, and opinion of Chief Justice Gilchrist in case of Thomas H. Baird vs. the United States.)

*Fourth,* That said claimant is entitled to interest on the aggregate amount of said claim, including principal and interest as aforesaid, from the year 1829 (being the time of said Luke Cannon's death) until the same is allowed, upon general principles of law and equity, and by virtue of express act of Congress, to wit: the resolution of June 3d, 1784. (See opinion of Chief Justice Gilchrist in the case of Thomas H. Baird vs. the United States.)

*Fifth,* That the sum of \$937 77 was and is a satisfaction of the claim of said claimants, only *pro tanto* as appears from the terms of said act itself, and upon the principles in the foregoing sections of this brief mentioned.

*Sixth,* That the said commutation certificate was not paid when it fell due, principal and six per cent. interest, but was commuted a second time into a stock bearing three per cent. interest,



by the operation of the funding act of August 4, 1790, and that said stock was ultimately liquidated by a payment of about sixty cents in the dollar.

EDWARD C. CARRINGTON,  
*Counsel for Petitioners.*

Your honors will observe, my first porposition is: that the Resolution of October 21st, 1780, which reads as follows, "That the officers who shall continue in the service to the end of the war shall be entitled to half pay during life, to commence from the time of their education," embodies a free, voluntary, fair, legal, and equitable contract between the Government and each individual officer of the Revolutionary Army who served to the end of the War or the period of his reduction, that he should receive in consideration for his services half pay for life. It is an agreement between two parties capable of contracting, supported by a good and valuable consideration, and the circumstances under which it was made give it in my humble judgment, a peculiar force and sanctity. This contract was made when the nation was unable in the regular and ordinary way to compensate the Officers for their arduous and dangerous services, and upon the earnest and repeated recommendations of General Washington.

No higher and nobler instance of self sacrificing devotion to the cause of country and freedom is recorded upon the pages of history than was exhibited by the heroes of the American Revolution. Without pay or emolument, they endured the toils and braved the dangers of that momentous struggle for liberty. The time and attention which they had a right to bestow upon their families were devoted to the cause of their country—and in return for this what did they receive?—a promise, reduced to writing, and made the law of the land, that when their term of service was ended, they should receive half pay for the remainder of their lives. A most excellent bargain on the part of the Government! Arduous, protracted, and incalculably important services for a small, and I may venture to say, totally inadequate consideration; and we now come before this court of justice with the laws of our country in our hands to ask, that this solemn promise, to which the national honor is pledged, may be honestly and faithfully redeemed. Congress has referred this matter for your impartial decision, having assumed the attitude of party defendant and invited us before your honors upon terms of perfect equality. It is, therefore, the ordinary case of one party to a contract, after a full, faithful, and honest performance on his part, claiming of the other contracting party the stipulated consideration, which he has a right to recover, not only upon every principle of equity and justice, but upon the clearest principles of conceded law, unless, however, the defendant in such a case can sustain one or the other of



the following pleas ; “ Accord and Satisfaction,” Release,” “ Payment,” or “ Limitation.”

Then, First, *Was there an accord and satisfaction of this claim between the Government and the Officers whom I now represent !*

These terms impart mutuality, the free, voluntary, and mutual adjustment of some matter in dispute between the parties litigant, upon a fair and equitable basis. Was there ever any such adjustment of this right to half pay for life “ acquired under the Resolution of Oct. 21. 1780,” between these officers and the Government of this Country ? In the solicitor’s brief it is contended, that there was, and the receipt of the commutation certificates admitted in the petition, under the Resolution of 22nd March, 1783, is relied upon to sustain this defence. This resolution reads as follows, to wit :

1. “ Whereas the officers of the several lines under the immediate command of his excellency, General Washington, did, by their late memorial, transmitted by their committee, represent to Congress that the half pay granted by sundry resolutions was regarded in an unfavorable light by the citizens of some of these States, who would prefer a compensation for a limited term of years, or by a sum in gross, to an establishment for life ; and did, on that account, solicit a commutation of their half pay for an equivalent in one of the two modes above mentioned, in order to remove all subject of dissatisfaction from the minds of their fellow citizens ; and whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army, as removing all objections which may exist in any part of the United States, to the principle of the half pay establishment, for which the faith of the United States hath been pledged ; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices, and sufferings have so just a title to the approbation and rewards of their country. *Therefore, resolved,* That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five year’s full pay in money, or securities on interest at six per cent per annum, as Congress shall find most convenient, instead of the half pay promised for life by the resolution of the 21st day of October, 1780 ; the said securities to be such as shall be given to other creditors of the United States ; provided, it be at the option of the lines of the respective States, and not of officers, individually, in those lines, to accept or refuse the same ; and provided, also, that their election shall be signified to Congress through the commander-in-chief from the lines under his immediate command, within two months, and through the commanding officer of the southern army from those under his command, within six months from the date of this resolution.”



“The same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life, as aforesaid; the acceptance or refusal to be determined by corps, and to be signified in the same manner, and within the same time, as above mentioned.”

“That all officers belonging to the hospital department, who are entitled to half pay by the resolution of the 17th day of January, 1781, may, collectively, agree to accept or refuse the aforesaid commutation, signifying the same through the commander in-chief, within six months from this time; that such officers as have retired at different periods, entitled to half pay for life, may, collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period: that with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due. And that so soon as their acceptance shall be signified, the superintendent be, and he is hereby, directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent. That all officers entitled to half pay for life, not included in the preceding resolution, may also, collectively agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time.”

Now, whatever construction your honors or myself may place upon this resolution, I imagine it will be sufficient for the purposes of my argument before a court of *equity* to show, that it was designed by the Congress that passed it, to be a substitute for the resolution of October 21st, 1780; that is to say, that if the election of the officers should be signified to Congress through the commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the southern army from those under his command, within six months from the date of this resolution,” to receive the commutation in lieu of half pay for life, then every officer, in that case, would be bound to accept the commutation or receive nothing for his services, whatever his own personal wishes on the subject might have been.

Now, this resolution, and the action of Congress with reference to it, may be capable of other constructions in the opinion of the court, more consistent with law and justice, but, it is certainly capable of this construction, which the whole history of the country upon this subject, from 1783 to the present time, clearly show. We find in the journal of Congress, vol. 4. p 278, these words, which were they not verified by the subsequent action of that body, would be hard to reconcile with our preconceived ideas of their justice and magnanimity: “*That your committee are*



informed, that such equivalent was ascertained on established principles, which are acknowledged to be just, and adopted in similar cases: but, that if the objections against the commutation were ever so valid, *yet as it is not now under the arbitration of Congress, but an act finally adopted, and the national faith pledged to carry it into effect*, they could not be taken into consideration."

The following year, April 5th, 1784, *ib.* p 357 and 377, Congress resumed the consideration of the report of the grand committee, when a motion was made by Mr. Hand, seconded by Mr. Jefferson, to amend by inserting commutation to the army *agreeable to the act of March 22, 1783, \$5,000,000 interest thereon, \$300,000 immediately before "total"* and the question to agree to the amendment—it was decided in the negative. This shows, that those men, regarding the commutation act as a substitute for the half pay promise, were willing in April, 1784, to provide for such claims to their fullest extent, although, comparatively, few officers at that date had received commutation certificates. Five millions of dollars was thought to be a sum sufficient to pay the claims of every officer of the army under the act of March 1783, and unless it was a point *already settled*, that they were, every one, to receive that mode of payment and nothing else, we cannot account for so large a sum being proposed.

But we come down to a later period in the history of this transaction, and we find, that in the opinion of Messrs. Boudinot, Scott, Madison, Hartley, Seney, and others, the act of March, 1783 was a forced substitution of five years full pay in Government securities for half pay for life, springing from the necessities of the times. (See debates in Congress upon "Public Credit," in 1790, *Mss.*, extracts filed.) I then, do no violence to this resolution by construing it as I have done, having the corroborating evidence of history, the uniform action of the Government, and the authority of the great names to which I have referred, to strengthen my position. Then, if this be so, the resolution of March 22, 1783 was so construed by Congress, and understood by the officers to be the substitution of a new mode of payment, in the place of the original one to which I first called the attention of the Court. Your honors will observe, that this is a mixed question of law and fact, of which you are the sole judges. The question to which I now call the attention of the court, is not what is the proper construction to be placed upon this resolution, but what interpretation was given to it by the Congress that passed it, and the executive officers of the Government in that day, and this, I think, is clearly shown from what has already been adduced, and which, I apprehend, will be conclusive upon this point.

(I do not wish to be groping in the dark, and put myself to unnecessary trouble and expense, and would, therefore, most res-



pectfully ask the court at this stage of the cause, to indicate the character and extent of the testimony they will require.)

If the history of the Country is the best and only evidence which the court will require, it will clearly appear, that the resolution of March 22, 1783, was construed by the Government and understood by the public, to be a substitute for the resolution of October 21, 1780.

But I go further and say, that this is the only construction warranted by the terms of the resolution itself. The language employed is, "that such officers as are now in service and shall continue &c., shall be entitled to receive five years full pay in money or securities on interest at six per cent \* \* \* \* provided it be at the option of the lines of the respective States, and not of officers individually in those lines, to accept or refuse the same; and provided also, that their election shall be signified to Congress through the commander-in-chief from the lines under his command within two months, and through the commanding officer of the southern army from those under his command within six months from the date of this resolution."

Here Congress, in my judgment, clearly intended to preclude, and did, in point of fact, preclude by the terms of this Resolution, the officers, individually, from the right of election between these two modes of payment, commutation and half-pay for life, and referred it to the choice of the lines, without indicating how that choice should be ascertained; but declaring that the evidence of that choice would be the report of the commanding officer—that upon this evidence, commutation should be substituted for half-pay for life in the case of every officer in the respective lines, whether he gave his individual consent to this substitution or not.

The conclusion then to which I come is, that Congress, by this resolution, substituted a contract made with a *body of men*, to wit: the lines of the respective States, without designating how their assent was to be ascertained, but leaving it discretionary with the commanding officer to determine the choice of the lines as he thought proper, and report to Congress within a given time, the result of his convictions, in the place of a prior contract made with an individual, to wit: each officer of the Revolution who served to the end of the war or the period of his reduction, as the case might be.

And this, I contend, your honors will say, Congress had no right to do, standing as it does before this court in the attitude of party defendant, without the free and voluntary consent of each individual belonging to this class of officers to whom I have referred.

Unless, indeed, you are prepared to say, that Congress *ex mero motu* could revoke a vested right which would be in the teeth of a decision by the Supreme Court of the United States, in the case of "*Kendell vs. the United States*, 12 Peters, 524; and a decision



by this court in the case of "Baird vs. United States." The proper point of enquiry then is ; did the officers whom I represent on the present occasion, give their free and voluntary consent to the substitution of this contract made with the *lines*, in the place of the prior contract made with themselves, *personally* ? But before I proceed to the discussion of this point, another important question arises, incidentally, which addresses itself to the grave and serious consideration of the court. Where rests the burden of proof ? Mark, if your honors please, I come before this tribunal, holding in my hand a solemn, written, and recorded contract made with these officers *personally, individually*, and upon the faith of which, it is conceded, invaluable services were rendered, claiming the stipulated consideration. The defendant meets me with the plea of accord and satisfaction. And, to maintain this defence, he produces another written contract of a subsequent date, made when the war was substantially ended, when, if there had not been a formal declaration of peace, there was no longer any demand for military service—made at the suggestion of certain field officers, as I shall hereafter show, without the authority, knowledge, or consent of these claimants, and made with another party, the *lines of the respective States*.

Now I submit whether, upon this state of facts, it is not incumbent upon the Government, in order to maintain this defense of accord and satisfaction, clearly and conclusively to show by affirmative evidence, that these officers, in *propria persona*, became parties to this substituted contract, by giving their personal consent to it, freely and voluntarily ; or will the court require me to prove a negative, by showing that these officers did not consent ; and more, did not do what, *prima facie*, it was against their interest to do. But it is argued, that it being conceded in this petition, that these officers received the commutation certificate, it is proper for the court, from that fact alone to infer, that he was a party to this substituted contract, and in the absense of all evidence to the contrary, that it was their own free and voluntary act. In reply to this, I would beg leave to say, let the burden of proof rest where the court thinks proper to place it, for I think it clear, from the terms of the resolution itself, as well as from the historical evidence to which I have referred the court, that these officers were not in any proper, legal, or equitable point of view, parties to this substituted contract, and that their acceptance of the commutation certificate was not free and voluntary. I think it very evident from the preamble to the resolution of March 22, 1783, that these officers did not memorialize Congress on the subject ; did not give their assent to it, and therefore, were not parties to it prior to its passage, and prior to its becoming the law of the land ; because, you will observe, the language there employed is, "Whereas certain officers under the immediate command of his Excellency, General Wash-



ington, did, by their late memorial, &c. &c.," referring exclusively to those officers who were at that time in Newburg, State of New York. And who were they?—the fourteen officers mentioned in this petition, who were not authorized to speak for the officers belonging to the southern wing of the American army, and did not reflect their wishes in relation to this matter; and they are the only officers who ever did, at any point of time, memorialize Congress upon this subject, for this is the only memorial of the kind appearing upon the Journals of Congress, (I defy the Solicitor for the Government to point to a single other,) and observe, that this is a memorial to which the names of the officers I represent are not appended, and of which all the presumptions are, they could have had no personal knowledge, belonging as they did, to another wing of the army, being in a different section of the country, and some of them, if not all, being out of actual service—at home on furlough. I come then, to the conclusion, that they were not parties to this substituted contract prior to its creation and prior to its becoming the law of the land, by act of Congress, from which there was no appeal. For I am at a loss to conceive, upon what principle the act of these fourteen memorialists could effect the rights of these officers under the original contract; by what mystic tie the officers of the Revolution were united, that a portion of them could usurp the authority to compromise the rights of the others. Most unquestionably, they could discharge the Government from its obligation to themselves, but I know of no rule of law, equity, or justice upon which they could release the Government from its obligations to their brother officers under the original contract, without some general or special authority from them. The question then is reduced to this:

Does the acceptance of the commutation certificate by these officers, under the resolution of March 22, 1783, after it became the law of the land, although they had no connection with it previous thereto, renders them parties to this substituted contract, or operate as an accord and satisfaction, or a release to the Government, of its obligation to them under the original contract.

I humbly apprehend that the question, whether the acceptance by a creditor of a certain negotiable paper, purporting to be worth a certain sum of money, which was intended by his debtor, and declared at the time, to be by him intended as a satisfaction, in full, for the vested right to an annuity for life, is in law and equity such a satisfaction, is one which must, in the nature of things, depend upon a variety of circumstances: the relation subsisting between the parties at the time, the spirit in which the paper is offered, the spirit in which it is accepted, and the character of that paper itself. At the time the first contract was made, the Government was, to a certain extent, in the power of the officer. He had a right—a *legal right*—to refuse his services and give his time



and attention to the maintenance and improvement of his family, but he freely devoted his hand and heart to the cause of his insolvent and bleeding country, and in return, he was contented to receive a written promise of future payment, when his toils and sufferings were ended. But when the substitute was created by act of Congress, the officer was in the power of the Government—the war was substantially ended—there was no longer any demand for his services; pay day had arrived, and there was no *Court of Claims* or any other tribunal to which he could apply for the enforcement of his legal and equitable rights. Congress, the party with whom the agreement was made, was at that time amenable to no legal process, and its decisions were final and conclusive. And now, to determine the spirit in which this commutation certificate was offered and accepted, it becomes necessary to enquire what is the proper construction to be given to the resolution of March 22, 1783, and what construction was given to it at the time it was passed by Congress and the accounting officers? This I have already considered to a certain extent, but here it becomes necessary to consider it more fully. The solicitor for the Government and myself construe this resolution differently. He contends that, it was the intention of Congress by this resolution, as its terms clearly indicate, to leave it to the voluntary choice of each officer who served to the end of the war or the period of his reduction, as the case might be, to determine between these two different modes of payment, commutation or half pay; and he illustrates it in this way: if the vote had been submitted to a line composed of one hundred officers, and ninety-nine had voted in favor of commutation and one against it, the vested right of election belonging to the one objecting would not have been destroyed by this vote of the ninety-nine, but he could refuse the commutation and recover the half pay if he had desired to do so. And upon this view, he concludes, and very justly, that the acceptance of the commutation certificate by this officer was not forced, but free and voluntary; and upon this point, it was further intimated by the court, when I had the honor to submit my opening argument in the cause, that the officer, so far from being forced to accept this commutation certificate, in receiving it, received what he had no right to demand, because the resolution in question gives him this privilege upon a certain condition precedent “provided it be at the option of the lines of the respective States,” which was intended to mean, that if every officer in a *line* decided in favor of commutation, then every officer in that line was entitled to this mode of payment; but if any one officer in any line objected to commutation, then every officer in that line, so far from being bound to accept that mode of payment, had no right to demand it. And it was illustrated in this way: an officer goes to the commissioner of accounts and says, “I am an officer of the Revolution—I have



served to the end of the war or the period of my reduction, as the case may be, give me my commutation certificate"—“No,” the commissioner of accounts might have replied, “You have not satisfied me that you are entitled to the commutation certificate, although I am satisfied that you were an officer in the Revolutionary army, and that you served to the end of the war, because the resolution of March 22, 1783, gives you a right to the commutation upon a certain condition, which is, that your line agreed to accept it in lieu of half pay for life, and now it is incumbent upon you to furnish me with satisfactory evidence that your line agreed to accept commutation instead of half pay, before you can require me to deliver you the commutation certificate; but I will dispense with this proof, which I have a right to require, and pay you this commutation certificate, which, however, you have no right to demand without this proof.” Now, the court desires to know if this would not be an act of liberality on the part of the Government, of which the officer or his representatives should be the last to complain; and in this view of the case, how does it appear that the acceptance of the commutation by the officer was not free and voluntary, but forced? To this view of the case, if your honors will pardon me for speaking technically, I both *demur* and *plead*. It is, I humbly submit, not warranted either by the law or the facts. I concede the general principle, that where a resolution or act of Congress is fairly susceptible of two constructions, the court, in deciding upon the proper construction to be given to it, should give it that one most consistent with law and justice; and that the construction given to the resolution of March 22, 1783, by the solicitor for the United States, is the only one consistent with law and justice; in other words, that the contract, or agreement, or arrangement (or by whatever name you please to call it) which he says Congress intended to make with the officers, was the only one which it had a right to make upon principles of law and equity, and that this court should and will so decide. To this extent the solicitor and myself agree. But, on the other hand, I contend, that it is clear from the terms of the resolution itself, and from the history of the country at that day, that Congress assumed to do what it doubtless thought best, in view of all the circumstances, for the whole country, but what it had no legal or equitable right to do, and what this court will decide, that it had no legal or equitable right to do, now that it has, for the first time, assumed the attitude of party defendant, and invited an impartial consideration of this question between itself and the officer, upon principles of law and equity. As I read this resolution, it cannot bear the construction given to it by the solicitor and intimated by the court, and is susceptible of no other construction than the one given to it by me—that it does not appear from the terms of this resolution that it was the intention of Congress to leave it to the free and voluntary



choice of each officer to determine for himself between these two modes of payment, but, on the contrary, that it clearly appears from the terms of this resolution, that it was not the intention of Congress to leave it to the free and voluntary choice of each officer to decide for himself between these two modes of payment, and that it was the intention of Congress to leave it discretionary with the commanding officer to obtain the sense of the lines with regard to this matter, as he thought proper, and if he reported within a certain time to Congress that the lines preferred commutation, then each officer was bound to accept that mode of payment or nothing for his services, without regard to his individual wishes on the subject, and without regard to the fact whether he had expressed himself at all in reference to the matter—whether he had objected or assented. For instance, to borrow the solicitor's own illustration, if the vote had been submitted to a line composed of one hundred officers, and ninety-nine had voted in favor of commutation and one against it, according to my construction of this resolution, it would have been competent for the commanding officer to report to Congress, that commutation was the choice of the line, and in that case, the officer objecting would be bound to accept this mode of payment or nothing for his services, without regard to his individual choice—otherwise, what is the meaning of these words in the resolution, “provided it be at the option of the lines of the respective States, and not of officers *individually*, to accept or refuse the same; and provided also, that their election shall be signified to Congress through the commander-in-chief from the lines under his immediate command within two months, and through the commanding officer of the southern army from those under his command, within six months from the date of this resolution.” It is a rule of construction to presume, that every word in a resolution was intended to convey some idea, and unless my interpretation is correct, why are these words employed: “Provided it be at the option of the lines of the respective States, and not of officers *individually* in those lines, to accept or refuse the same?” But, as I have already argued, we are not left to conjecture in reference to this matter; if the history of the country at that day is the best evidence of which the case is susceptible, I have shown by clear, conclusive, and abundant proof, that this is the interpretation that was given to this resolution by the men who aided in making it the law of the land, and who are conceded to be the ablest expounders of the laws and constitution, of their day and generation, and who, in the nature of things, must have known better than the men of the present day possibly can, the intention of Congress in passing this resolution, and the meaning conveyed by its terms. If this be so, the conclusion is inevitable, that Congress did what it had no legal or equitable right to do, in passing this resolution, and thereby substituting in the place of a contract made



with each *individual* officer who served in the Revolutionary army to the end of the war or the period of his reduction, as the case may be, another contract of a subsequent date and a different nature, and made with a different party, *the lines*, (and leaving it discretionary with the commanding officer to ascertain the sense of the lines as he might think best,) and by making this subsequent contract a law from which there was no appeal, rendering it binding upon every officer in the line, without regard to his wishes or opinions *individually*, and thus leaving him no other alternative but to accept the proffered commutation or nothing in return for his services. With regard to the illustration put by the court, I might suppose an interview which it is infinitely more probable did, in reality, occur between the parties referred to by your honors. Perhaps, when the officer called upon the commissioner for a settlement of his account, the latter addressed him after this wise: "I do not know what your views or wishes on this subject may be, and it matters not what they may be, Congress is satisfied, from the report of the commanding officer, that commutation is the choice of the lines, and I therefore have no discretion in the matter, and must settle with all the officers by giving each one of you a commutation certificate, although, *personally*, many of you have expressed no opinion on the subject, and may prefer the half pay." But if your honors please, we are now dealing in the ideal—these are fancy sketches. Allow me, in my *plain, practical* way, to present the real picture, drawn from the evidence and pleadings in the cause. "Grim-visag'd war hath smoothed his wrinkled front," the young and hardy veteran of the Revolution, in the southern wing of the American army, if not actually discharged from service, is on furlough, quietly seated at his happy home smoking the pipe of peace, in the full fruition of that greatest of all earthly blessings—the society of his wife and children—surrounded by those domestic associations that invest his hours with silent and unceasing felicity; he indulges perhaps in the following pleasing reverie: In conjunction with my gallant associates, many of whom are now in that happy land "where the weary are at rest, and the wicked cease from troubling," I have achieved the independence of my country, and secured the gratitude of my countrymen for all coming time, thank Heaven! a grateful country has made ample provision for myself and family; by resolution of Congress I can draw half pay for life, which will render us comfortable for the remainder of our sojourn upon earth,

"Heu; nescia mens hominum fati sortisque futuræ."

The spell is suddenly broken; the post-boy enters, his apartment and hands him a communication which bears the ominous endorsement "official business;" he opens it, and his eye falls upon a singular document which he can neither explain or understand.



After fruitless efforts to unravel the riddle within the limits of his own family circle, he concludes to consult the village schoolmaster, who, as your honors well know, can solve any mystery under the sun. The learned pedagogue puts on his spectacles, and, with a glance, pronounces the document a *commutation certificate*; and commutation, he says, is derived from the latin word "*commuto*," *commutare*, *commutavi*, *commutatum*, which means to *commute*, that is to say, to change. "The devil take your *commutos*, *commutares*," replies the blunt and honest soldier, "I would rather have my half pay for life." "But," says the schoolmaster, "I think you have no right of election—no personal choice in the matter—because Congress has passed a resolution upon the memorial of fourteen officers in Newburg, declaring that if the commander-in-chief and the commanding officer of the southern army reported to them within a certain time, that the *lines* preferred commutation to half pay, then every officer shall be entitled to receive this commutation certificate instead of the half pay for life, without regard to his personal choice, for the language of the act is, "provided it be at the option of the lines of the respective States, and not of officers, individually, in those lines, to accept or refuse the same." And this being the last act in relation to this subject-matter, it is the law that governs it, from which there is no appeal, and therefore, leaves you no election between these two modes of payment; and leaves you no alternative but to accept the commutation or decline all remuneration for your services; but you can go and make the effort. Thereupon he goes to the Commissioner of Accounts and submits his application for half pay, when he finds the judgment of the school-master signally illustrated; for he is met with the same objections to his application, and is further told, that his commanding officer, Lieutenant-Colonel McLean had preceded him with a similar one, and that when he was informed how his claim for half pay had been commuted by his superior, Colonel Lee, he denied Colonel Lee's authority for so doing, and persisted in his application; it was, however, refused, and he then concluded to accept the commutation. How, then, the Commissioner of Accounts would say, could I admit your claim for half pay? I can settle your claim and all similar claims by no other rule than the resolution of March 22, 1783, because it has been pronounced by the highest authority to be a substitute for the resolution of October 21, 1780; and thus the officer, seeing this alternative presented—commutation or nothing—he comes to the very wise and rational conclusion, better take half loaf than none. He is embarrassed in his pecuniary circumstances, it may be, and under the pressure of necessity, determines to convert his certificate into ready money; it is really worth one-eighth of its nominal value, as the history of the country of that day abundantly shows, (about \$250 in cash). On his way to make the



exchange he is met by some kind friend like the Solicitor for the Government, who advises him to hold on to his certificate, for it is a document which will prove, at some future day, to be highly valuable, and will yield principal and interest, what upon its face it purports to be worth. He heeds this timely advice, and what is the result? Eight years afterwards, when he has attained the meridian of life, and his family has increased around him, it is funded by the operation of the funding act of August 4, 1780, which was nothing more nor less than a second commutation of this certificate, which, up to this period, has yielded no interest at all, much less six per cent. interest, into a stock bearing three per cent. interest. Here, too, he must submit, for it is the effect of a law which he cannot gainsay, and from which there was, at the time, no right of appeal. But he holds on still with a tenacity and perseverance worthy of a better cause, and some thirty years afterwards, if, by reason of peculiar strength, he reaches his three score years and ten, he lives to see this remarkable debt *finally* and *fully* liquidated; and how, if your honors please, by paying sixty cents in the dollar! And this is the accord and satisfaction by which our claim is met. The court will pardon a further illustration. One of your honors enters into a written and solemn contract with me to this effect: "render certain services and I will give you an annuity for life." The bargain is struck, and the services are rendered by me accordingly, to your entire satisfaction. I return home from the field of labor without a settlement between us; while there, I receive a letter from you, enclosing a check for a sum of money payable at a future day, and declaring, that whereas certain persons who rendered similar services under the same contract with you, as myself, had expressed a preference for this mode of payment, therefore I should be entitled to receive this sum of money in lieu of my annuity, provided the persons who labored with me under this contract, as a body, expressed their preference for this mode of payment, whatever my own personal wishes on the subject might be. And suppose there was no appeal from this letter—that at the time it was received you were amenable to no legal process—would a court of equity decide, under such circumstances, that I enjoyed the right of election? And if I put the money in my pocket, would it amount to an accord and satisfaction on my part, and a relinquishment of my rights under the original contract, and more especially when the check was not promptly and fully paid at maturity? And if you afterwards became amenable to law, and I embraced the first and earliest opportunity of bringing suit, either in person or by my proper legal representative, would not a court of equity allow my entire claim, according to the terms of the original contract, giving you credit for the amount you had actually paid me? I leave the point with the court to decide.



And again, if your honors please, upon the hypothesis, that the officer was a party to this second contract, by giving to it his free and voluntary consent, it is still a question for this court having equitable jurisdiction, whether he is not remitted to his rights under the original contract, in consequence of the Government failing fully and fairly to execute this second contract; for the court will observe, that upon this subject of award we are referred by the Solicitor to Story on contracts, (sec. 982,) where the following language is employed: "An accord is an agreement between two persons to substitute some equivalent in satisfaction of a claim due from one to the other. Such an agreement must "be advantageous, in full satisfaction, certain, and perfectly executed." The idea seems to be, that the substitute must possess all of these constituent elements, or it is defective as an accord and satisfaction. If, therefore, it can be shown, that the substitute was not perfectly executed, this defence must fail. Where, then, would the officer stand? Would he be remitted to his rights under the original contract, or would his remedy be damages for breach of the second contract? Without expressing any opinion, I leave it with your honors to say, simply remarking, that this is a court having equitable jurisdiction, and that our petition contains a prayer for general relief. I propose, however, to show, by the best evidence of which the nature of the case is susceptible, the history of the country at that day; that this second contract was not fairly and fully executed by the Government. What did the Government obligate itself to do by this second contract? "To give the officer the amount of five years' full pay in money or securities on interest, at six per cent. per annum, as Congress shall find most convenient, instead of half pay for life; said securities to be such as shall be given to other creditors of the United States." Now mark, if your honors please, the conditions assumed by the Government, all of which must be fully executed: First, to pay the officer so much money, so much cash, or securities, equal to cash—Government certificates bearing six per cent. interest. It is true, the language employed is, "said securities to be such as shall be given to other creditors of the United States," and this is all, in the view of the Solicitor, that the Government, in this respect, assumed to do. But, in my judgment, to say, that Congress intended by this resolution to obligate itself to give the officer, in exchange for his vested right to an annuity for life, paper certificates less valuable than they purported to be, is tantamount to saying that Congress deliberately designed the perpetration of a gross and outrageous fraud. For instance, one of your honors owes me an annuity for life by virtue of services rendered; you propose to give me a certain sum in gross or your negotiable note, bearing six per cent. interest and payable at some future day, as it may suit your convenience, said note to be such as *you are in the habit of giving your other creditors.* I



accede to the proposition, and agree to accept the money or the note, as it may suit your convenience, in full satisfaction of my vested right to the life annuity, whereupon you deliver the note into my possession. I take it, although you may be embarrassed in your pecuniary circumstances, having the most implicit confidence in your honor and integrity, under the firm conviction that it is as good as the money, and will be promptly and fully met at maturity. But, if you, at the time it passed, intended that it should be less valuable than it purported to be, and afterwards to protect yourself from the lash of an insulted and indignant creditor by the miserable excuse that you only promised that it should be equal to the paper given to your other creditors, would you not be guilty of a base fraud and deception; would not you be unworthy the protection of a court of law, much less a court of conscience? Would you not richly deserve the scorn and reprobation of all honest and honorable men? Now, I put the question, and I put it in all solemnity. Is not this an illustration directly in point? Upon the hypothesis assumed for the purposes of the argument in this view of the case, the officer of the Revolution agrees to take the commutation certificate in lieu of his right to half pay, upon the credit of an *honest* Government, believing it to be as good as the money, and believing that it will be promptly and fully paid at maturity. But, in point of fact, at the time it is received, it is really worth, as the records abundantly show, barely one-eighth of its nominal value; and when it falls due, instead of being paid, principal and six per cent. interest, it is commuted a second time—commuted, as I have already said, by the operation of the funding act—an act of Congress from which there was, at the time, no appeal, into a stock bearing three per cent. interest; and this stock is ultimately honored, and the original indebtedness liquidated by a payment of about sixty cents in the dollar. And, secondly, the other condition assumed by the Government, by the terms of this resolution, is to pay the money down, or deliver the securities at a certain time, to be paid at a certain time. But, in point of fact, the money was not paid cash, nor were the securities delivered until about two years subsequent to the period stipulated for their delivery, nor were they paid, either in whole or in part, at the time agreed upon, nor were they ever, as already argued, fully paid. Now, I concede the familiar principle of equity, that time is not a material element in a contract, but most unquestionably, where the agreement is to substitute a certain sum in gross or a negotiable note, payable at a certain time, in the place of a vested right to an annuity for life, time is a most important and material element. In many respects, this case may be likened to the ordinary case of an insolvent debtor compounding with his creditors, by agreeing to pay so much at a certain time, and then failing to carry faithfully into



effect the articles of compromise. And what becomes of such a compromise? Does it not cease to exist at the point of time its terms are violated? Is it not destroyed by the omission of the debtor to fulfill his part of the agreement? And where, then, would the parties stand? Would they, or would they not, be remitted to their rights under the original contract, as though no offer of compromise had ever been submitted between them? And before dismissing this branch of the subject, I beg leave to refer the court to the following extracts from the report of Committees in Congress upon the several petitions presented by the officers of the Revolutionary war, asking to be reinstated in their rights under the resolution of October, 21, 1780. They first petitioned in 1809, and in February, 1810, the Committee of the House of Representatives report as follows:

“The petitioners state, and the fact is of too general a notoriety to be disputed, that although they confidently expected at the time they were compelled, from imperious necessity, to accept the sum in gross, in lieu of half pay for life, that it would be paid to them in reality, and not by a fresh promise, without any sufficient guarantee for its due performance; yet they were compelled to receive *certificates*, which, for want of any specific provision for the payment of them, were immediately depreciated to five for one, and, by degrees, to ten for one in exchange for money. They therefore pray that half pay for life, to commence from the time of the reduction of the army, may be granted to them by Congress, by the resolutions before referred to; deducting therefrom the five years’ full pay received by them, in depreciated paper, by way of commutation.” \* \* \* “Upon the whole, the committee are of opinion, the contract entered into by Congress with the officers of the late revolutionary army, for giving them half pay for life, has not been substantially complied with by our Government: they therefore recommend the following resolution:

“*Resolved*, That the prayer of the petitioners is reasonable, and ought to be granted.”

No relief, however, was granted at that time.

Again, in December 1818, Mr. Johnson of Kentucky, to whom was referred the petition in behalf of sundry surviving officers of the revolutionary army, reported:

“In the beginning of the year 1783, a memorial was presented to Congress from a committee of the officers of the army under the immediate command of General Washington, proposing a relinquishment of the half pay for life, on condition that an equivalent should be provided, either by the payment of a sum in gross, or by a full compensation for a limited time. This proposition, which originated with the officers of the army, grew out of the connection that the half pay for life was regarded by their fellow citi-



zens as savoring too much of the spirit of a privileged order, which rendered the measure unpopular with many of the community; and the proposition on the part of the officers to relinquish the payment for life was, and ever will be, viewed as an act of the most distinguished patriotism, in perfect accordance with that entire devotion to the country, which is so strikingly manifested in all their sufferings, sacrifices, &c.

“Congress, well apprized of the prevailing objection to the allowance for life, which had been adopted only from necessity, readily embraced the occasion of removing a measure objectionable in its principles, by a commutation of five years’ full pay in lieu of the half pay for life, in a resolution of March 22, 1783 \* \* \*

“The memorialists state a variety of facts, and present many considerations to prove, that by the commutation, great injustice has been done to the officers originally entitled to half pay for life, and their object is, to induce the Government to resume the original contract of half pay for life, upon certain terms therein expressed; and the memorial concludes with a specific prayer, that an act may be passed directing the accounting officers of the Treasury to adjust the claim of each surviving officer of the revolutionary army of the United States who, by the resolves of Congress, was entitled to half pay for life, calculating the amount of the principal of the arrearages from the time of his reduction, and deducting therefrom five years’ full pay, and the balance of arrearages being thus ascertained, to issue a certificate bearing an interest of six per centum per annum, to the officer, for the amount of said balance, and the officer to be thenceforth entitled to receive half pay, in half yearly payments, for and during the term of his natural life.

“Again, *on the 10th December, 1819, the Select Committee made a report upon the memorial of the officers of the revolutionary army, accompanying a bill for their relief.*

“The memorialists represent, that by the resolve of 21st October 1780, Congress stipulated that half pay for life should be allowed to the officers of the revolutionary army, who should continue in service to the end of the war; that they did continue in service to the end of the war, and therefore became entitled to the benefit of the contract thus entered into with them by their country. That this contract has not been fulfilled, and they are now entitled to ask its fulfilment.

They further represent, that the commutation offered and received under the resolve of March 22, 1783, ought not to be considered as cancelling the obligation of the Government or impairing the claims of the officers, because it was itself an acknowledgment, by the Government, of its incapacity, at that time, to fulfil the contract; because it was offered, not to individuals, but to lines and corps, for their acceptance, which gave an undue influ-



ence to officers of age and rank, who were likely to be gainers by the arrangement, and did not afford a full opportunity to the younger officers of inferior grade, who were chiefly interested in retaining the half pay for life ; and excluded altogether from a voice in the decision, many meritorious officers, whose lines had been broken up by the casualties of war ; because, also, it was offered to men whose necessities obliged them to accept what they could obtain for the immediate supply of their wants ; and finally, because the commutation was not, as it ought to have been, and was intended to be, an equivalent for the half pay life. \* \* \*

It is not, however, upon grounds like these that the memorialists rest their application. They claim upon the footing of right, maintaining, your committee respectfully submit, with great force, that what they ask for is due to them by contract. In the examination of this claim, it appears to your committee that, towards men whose merits are so unquestionable, the Government ought to be guided by principles of liberal justice, having regard to all the circumstances, giving them all their due weight, and, even where there might be some doubt upon the application of the rules that govern between man and man, to incline to favor memorialists. With this explanation the committee beg leave to state that they consider the resolve of 21st October, 1780, as a contract between the Government and the officers, voluntarily and freely entered into at a time when both parties were at liberty in regard to the subject of it ; and stipulating, as the condition on the part of the officers, their future service until the end of the war, whatever might be its duration. It is not to be questioned, that the stipulated service was performed, nor that it was eminently useful. But it deserves to be remembered, in connection with all which subsequently occurred, that, after the officer had rendered the service, he had no further reliance but upon the faith and ability of the Government. This was his condition when the resolve of March 22d, 1783, was adopted. The preliminaries of peace had been signed, the army was about to be disbanded, and he thrown into society, there to seek his livelihood by civil pursuits, for which the tenor of his preceding life was calculated only to disqualify him. Had he, under the pressure of circumstances so urgent, and growing out of his previous services, assented to the commutation, his country could scarcely deem it a voluntary assent, but rather a submission to an uncontrollable and instant necessity, which admitted of no deliberation or delay. But there is another reason why this assent ought not to be considered as binding.

“The contract of 1780 was with the individual officers, and it is not strictly reconcileable with justice, that it should have been varied, rescinded or released, as to any one of them without his own individual consent. The commutation, except as to certain



retired officers, was offered, not to individuals, but to lines and corps, thereby subjecting the individual, as to his own particular rights, to the decision of others, and with respect to the younger and inferior officers, exposing them to be governed by the overruling influence of superior rank and years, to which they were habitually accustomed to submit."

The committee are aware, that it may be urged, (and between individuals it might be decisively urged,) that the subsequent acceptance of the commutation certificate, of itself, amounted to an assent. If the officer had been left free to make his choice, and, having made it, the Government had given him what he consented to receive, the argument would not have been without some force. But he was not so free. The resolve of Congress, an act of the Government and a law, left him no choice, except to abide by the decision of the lines and corps, of the army, or wait, whatever might be his wants, till a more fortunate period should enable him to approach that body, not with the power to enforce his rights, but only to sue for it in the language of solicitation. It may be remarked, though somewhat out of order, that this is substantially the course which these memorialists are now pursuing. They have waited till their country is able to do them justice, and they now petition for their right, offering to relinquish all they have received.

But it is also true, and furnishes an additional answer to the objection, that the Government was not able to comply with the terms of the resolve of 1783. It could not pay in money, and it did not pay in what was equivalent to money. The commutation certificate was then, and for some time after, worth not more than one-eighth, perhaps even less, of its nominal value. When, at the distance of eight years afterwards, the funding system was established, it is notorious that, generally speaking, the certificates no longer remained in the hands of the officers. The restoration of the public credit came too late for men whose necessities were so imperious; and this half pay for life, which had been solemnly stipulated, and most meritoriously earned, dwindled in the hands of the officers, without any fault of theirs, to scarcely more than half pay for a single year.

Under this view of the case, it seems to your committee just and reasonable, and becoming the faith of the nation, to execute the contract originally made, upon the terms proposed by the memorialists; that is to say, of deducting from the arrears of the half pay, computed from the cessation of hostilities to the present time. the full nominal amount of the commutation certificate, and paying the surviving officers the balance; and, hence forward, during the remainder of their lives, paying to them the half pay stipulated by the resolve of 1780. \* \* \* \* \*



In conformity with these suggestions, the committee herewith report a bill.

Again, in 1826, the officers petition Congress, and on the 3d January 1826, another favorable report is made as follows :

“It seems to the committee that the performance of a contract, on such an occasion, and especially one which has produced such boundless consequences, ought to be observed, on the part of the Government, with the most profound sanctity ; and that nothing but the free expression of the will of both parties, unaffected by necessitous circumstances, ought to be allowed to abrogate or rescind it. But, as it appears to the committee, it is manifest that the resolve of the 22d of March, 1783, which commuted the half pay for life for five years’ full pay, grew out of the impoverished state of the Treasury ; for, had the finances of the country been in a good condition, it is inconceivable that Congress would have proposed a change so disadvantageous to the officers, to whom the country, independent of the discharge of its contract with them, owed such a large debt of gratitude. And, on the other hand, it cannot be believed that the officers would have given any assent to the commutation, either by lines or corps, or individually, if the most urgent necessity had not deprived them of any other alternative. The acceptance, too, by lines and corps, deprived many individual officers of the right of choice, and placed the young and aged on terms disproportionate with the original stipulation. The subsequent acceptance of the commutation certificates ought not to be considered as altogether impairing the rights of the officers, as they were then entirely in the power of the Government, and could do nothing which presented better prospects for themselves. The whole transaction, as it appears to the committee, were of a similar character, and were indisputably governed by the inability of the Government and the immediate wants of the officers ; and as severe as the departure from the original contract must have appeared to the officers at the time, they did not then foresee the extent of their misfortunes ; for, as no fund was pledged for the payment of the principal or interest of the commutation certificates, instead of receiving good money, in punctual payments, as expected, the credit of the country became so low, that nothing of the interest was paid, and the certificates rapidly decreased in value, while the necessities of the officers continued to increase. \* \* \* \* \* The performance of contracts, morally or politically speaking, is equally sacred ; and when the power of decision resides exclusively in the bosom of one of the parties, it should be exceedingly cautious that justice is done to the other. Let it be imagined that the claim of the officers of the army of the Revolution could be submitted to the people or to a court and jury possessing legal and equitable jurisdiction, the



committee verily beleive, that their demand, in some shape, could not be resisted.

“If even an individual, in the midst of his misfortunes, should, by a fair understanding, disengage himself from his creditors without discharging the entire debts, it could not be applauded as any remarkable instance of benevoleuce or honesty, if he should afterwards pay the remainder to relieve the sufferings of the aged and meritorious, as soon as affluence and good fortune had rendered his own condition flourishing beyond example.

“Although the case between the Government and the officers of the continental army resembles the above in some respects, yet, in other essential particulars, it is a much stronger case, as the claims of the officers are founded on a contract, which, in the opinions of the committee, under all circumstances, has not been fairly rescinded, and, if it has, there cannot possibly exist a doubt that the commutation contract has not been fulfilled: for, if the officers had been able to have held their certificates to the period in which they were founded, they would not have received their interest according to their contract; and, besides, the arrears of the interest were then funded at three per cent., which was a clear infringement of the contract, as the arrears ought to have been paid before, instead of being reduced to one half of their value.

“The payment, likewise, of the one third of the principal, was deferred for ten years without interest, which is again a departure from the contract. But the weighty and most important circumstances of all, that the inability of the Government to perform its contract inevitably obliged the officers to part with their certificates at the reduced prices of eight for one, presents an argument in equity sufficiently powerful to satisfy Congress that a claim of some description, in favor of the officers does, in good faith, exist.

Again, in Feb. 1828, another favorable report is made, upon which the act of 15th May, 1828, was passed. To these offers, were annexed two express conditions, viz; first, that they should be accepted or refused by lines and corps, and not individually; and second, that such acceptance or refusal should be signified to Congress by the commander-in-chief, as to the army under his immediate command within two months; and by the commanding officer of the southern army, as to those under his command, within six months from date of the above resolve of 22 March, 1783. At the time these offers were made, it is evident, from all the calculations on the probabilities of human life, that seven years' full pay, in advance, would have been somewhat less than an equivalent to the half pay for life, to the younger class of officers, who naturally are the present memorialists. And your committee are compelled to say, that they have discovered no reason why the Government should have denied an individual right of refusing a disadvantageous offer, when the right was individual, and considering the



Government under the obligation of an express solemn contract. Your committee do not perceive why it might not as well have annulled the original right, as to have enforced the memorialists to abide by the vote of others who were interested, to put the value of the lives of all upon one equal footing. If, however, it should be considered by the House that an assent given in the manner prescribed by the resolve is binding upon each individual, then your committee beg leave further to observe, that such assent, which is to work so much injury and injustice, ought to appear to have been given and signified strictly according to the conditions of the offer. In examining this part of the subject, your committee do not find any signification to Congress of any acceptance, other than a notice in the journals of a report made by the Secretary of War, on the 31st of October, 1783, and long after the officers had dispersed, that certain lines, from New Hampshire to Virginia, inclusive, had agreed to accept. This report itself is not to be found, but certain it is that no signification was made to Congress, either by the commander-in-chief, or the commanding officer of the southern army, or within the times prescribed by the offer; neither was there ever any resolve of Congress, specifying such assent, or declaring their option, whether to pay in money the amount offered, or to give securities for the same, on interest. If the offer had been complied with, according to its sense, your committee are of opinion, that the loss of two years' full pay would have been submitted to, as a new sacrifice, with that patience and disinterestedness which were the distinguishing characteristics of an American officer. But, on a careful examination of this matter, your committee have been forced to the conclusion that the offer was not so complied with, which conclusion results from the following considerations, which are most respectfully submitted to the House: From the manner of calculating life annuities, which is by estimating, on the one hand, the purchase money with compound interest, and on the other, the probable duration of the life; from the pressing pecuniary necessities of the officers, and their want of capital to set up with advantage, in some of the profitable pursuits of civil life, and from the absence of any specification in the resolve as to time, it is manifest that it was as well the common understanding of the parties, as the legal conclusion, that the offer was to be complied with in advance, or in anticipation of the growing annuities. After the peace, and after the officers had dispersed, a certificate was sent to each individual, indiscriminately, whether he had retired on the reform of the army, or had continued in the service, that an amount equal to five years' full pay was due to him, and that such an amount, with interest, was payable to him or bearer. The certificates had no funds whereon to rest, and their market value was not equal to one years pay; and it appears to your committee too much to say, that the delivery of



this almost valueless paper was a payment in money, according to the sense of the offer, or that these certificates were the securities intended thereby, either according to the common understanding of the term, or the distinction expressly made in the resolve itself, between securities and certificates.

And these certificates of the paymaster general, or of the commissioners for settling army accounts, were not securities to any creditor of the United States, until registered or funded, more than the other floating certificates of the quartermaster General, or the Commissary General, which were issued and made payable, with interest, under express resolves of Congress, during the period of the war. Under these considerations, your committee, in the choice of the alternative, are obliged to say that, in their opinion, the delivery of these certificates, as well on general principles as on those which govern in courts of law or equity, did not annul the right to half pay, or exonerate the Government from the obligations of the original contract in this regard. \* \* \* \* If, however, the House shall consider that the original right has been compromised, then there is another view of the subject which has forcibly pressed itself upon your committee, and is now respectfully presented to the House, namely: whether it is not due to national justice and honor under a review of all the peculiar hardships attending the enforcement of this compromise, and the manner of executing it, on the part of the Government, that it should now make good, in a degree at least, from what is absolutely gained to these aged memorialists, the part they actually lost thereby of that recompense of reward, the expectation of which had softened their hardships, lessened their privations, and animated their exertions in bringing the doubtful conflict to a successful issue.

With regard to the question of limitation, allow me to refer your honors to the old and familiar maxim, "*nullum tempus occurrit regi.*" Now, if the converse of this proposition is not equally true, it ought to be, in my judgment. If the plea of limitation cannot be maintained against the Government, it should not be maintained in its favor, when a highly meritorious claim is presented for adjustment before an equitable tribunal established by Congress for the adjudication of causes between the Government and its citizens, upon terms of perfect equality, and if I am not greatly mistaken, this equitable rule has universally prevailed; for I apprehend the rule of law and precedent has always been, and still continues, that the Government of this country will plead limitation against its own citizens only in a certain class of cases, where there is an express act of Congress, declaring that a certain class of cases shall be paid if presented within a given period of time. In such cases, if the claim is not presented within the time prescribed, it is barred by limitation. But, on the other hand, as a general rule, a claim against the Government in all respects just,



legal, and equitable, will not be barred by limitation, provided Congress is silent with regard to the time within which it is to be presented. Now, if this rule is observed in the adjudication of this case, it is not, in my judgment, barred by any of the resolutions of Congress, in the nature of statutes of limitation, relied upon by the Solicitor for the Government—either the resolution of February 12, 1793, July 23, 1787, or November 22, 1785, because they do not refer to this particular class of cases, but to other cases, and of another description. Certainly Congress did not intend these resolutions of limitation to embrace this class of cases, because it is clear, in the opinion of Congress, that they had been finally settled and determined. But, if your honors please, I maintain further, that this point is clear, upon general principles of law and equity; first, because Congress, the only power competent to make any provision for the payment of these half pay claims, made none, but on the contrary, repudiated the debt in that form by the resolution of March 22, 1783, as I have already endeavored to show, and I hope successfully. Now, if your honors please, how can we be properly charged with sleeping upon our rights, because we failed to make what we knew would be an ineffectual demand, because we failed to demand what it was not in our power to enforce. The question was asked by the Solicitor for the Government, why did we not petition Congress, as was done by the distinguished Dr. Baird, to whom I shall hereafter pay my respects, if we desire to bring ourselves within the rule, and stay the operation of limitation? I reply, by asking another question; for what purpose, and with what hope of success, could we apply to a body that had already prejudged the case, who were estopped by their own record and solemn act, from a settlement with us, according to the terms of the original contract, and who now stand before this honorable court in the attitude of party defendant? Would it not have been like kicking against the pricks, or, if you please, casting pearls before swine? Aye, if your honors please, we might have followed the example of Dr. Baird in this respect, and in all human probability, we would have shared a similar fate. Limitation ought to rest upon the presumption that the debt was originally paid, because, by a subsequent acknowledgement, its progress is checked, and the original debt revived; but that presumption cannot arise here, for it is clear from the facts conceded in the pleadings, that the account claimed in this petition was never settled. And, in the second place, I maintain that this claim is not barred by limitation, because if I am correct in the views already submitted, we were laboring under a legal disability, so far as the recovery of this claim is concerned, until the establishment of this court, and therefore we have prevented the operation of limitation against us, by embracing the earliest opportunity to sue the Government before your honors, the first



and only legal tribunal to which the Government has ever been amenable, as party defendant. I apprehend, that it is a clear and undoubted principle of law, that a party stays the operation of the statute of limitation, by bringing suit upon a contested claim, provided the suit is brought before the claim is actually barred by limitation; and the claim is not barred by limitation, where the plaintiff is under a legal disability, which prevents him from entering his suit, when the right of action first accrues, provided he brings his suit within a reasonable time after the legal disability under which he labors, is removed. In other words, the statute of limitation begins to run in the case supposed, only from the point of time when the legal disability is removed. In illustration of this principle, I might refer your honors to the familiar cases of minors, mortgagees, persons beyond seas, and others laboring under any kind of legal duress. Now, if your honors will pardon some repetition which becomes absolutely necessary in the presentation of this question in its various phases, I beg leave to repeat, that these officers, whom I represent on the present occasion, were under a legal disability which prevented them from enforcing their respective claims for half pay under the resolution of October 21, 1780, until the establishment of this court, because until then the Government was amenable to no legal process, and because Congress, until then, the only power competent to take cognizance of this question, had decided it by the resolution of March 22, 1783, in the manner already illustrated. And not only was Congress thus committed to the Government, but Congress was also an interested party, being the very party between whom and the officers this question of difference existed. It strikes me that this point has been decided by this court, as I shall endeavor hereafter to show, in the case of Thomas H. Baird, administrator of Dr. A. Baird, deceased, *vs.* The United States.

But this question was fully settled by the Court of Appeals of the State of Virginia, and I invite the attention of the court to the opinion, as delivered by Judge Coulter, in the case of Lilly *vs.* The Commonwealth. (Leigh's Reports, vol. I., 516.):

"The attorney for the Commonwealth has pleaded the statute of limitations as a bar to the claim; and has also relied on the lapse of time as evidence of payment or abandonment of claim. As to the former; as the claim *rests upon the laws of the land*, and the *commission under the seal of the Commonwealth*, without examining the other objections taken to the plea, I think it *cannot* be *pleaded* as an absolute *bar* to the claim. As to the presumption of payment, I think the detail which will be given hereafter, of the resistance of the State, for a long time, to all claims for half pay, even in cases of service *during the war*, will furnish conclusive proof that he could not have been paid. And as to abandon-



ment of his claim, he may have done so, *in despair of obtaining it*; but there is no evidence that he ever doubted its justice."

Now, I am aware of the decision rendered by this court in the case of Carson, administrator of Grulb, *vs. The United States*. In that case your honors decided that a certificate of final settlement, not registered, might be barred by limitation, and clearly, therefore, in my judgment, your honors further decided, by implication in that case, that where a certificate of final settlement, or one which was intended by Congress to be a certificate of final settlement (as was the case with the commutation certificates) is registered, it would not be barred by limitation, and for very good reasons, which, however, it is unnecessary to enumerate. Now observe, if your honors please, it is alleged in this petition, and I imagine conceded by the Solicitor for the Government, that these commutation certificates in question were funded, and stocks issued upon them bearing three per cent. interest therefore registered, because all the certificates which were funded were registered. Nor do the decisions rendered by this court in the cases of Ballou *vs. The United States*, and Chamberlain *vs. The United States*, affect the principle for which I contend. There is, in my judgment, an important and material point of difference between those cases and the one at bar; in the former no commutation was ever demanded or allowed; there was, therefore, no acknowledgement of any indebtedness on the part of the Government, or claim made by the parties previous to the impetration of their respective suits before this tribunal. In the latter, the Government acknowledged its indebtedness to these officers, by paying them in these commutation certificates, which, as I have already argued, Congress considered a final settlement of their respective claims, but which, I am very strongly inclined to agree with Mr. Scott, were nothing more than the evidence of a pre-existing contract broken. Again; with regard to the question of interest, I have simply to say, that if the views already presented are correct, interest follows as a necessary and inevitable consequence, upon general principles of law and equity, the right to recover interest follows the right to recover a just and honest debt improperly and illegally withheld, as the shadow does the substance; and if we are entitled to interest upon the aggregate amount of principal which may accrue from the time of the officer's death down to the period when these claims shall be allowed, by a parity of reasoning we are equally entitled to the aggregate amount of interest upon the annual payments as they respectively fell due during the same period of time. And again; if your honors please, I am of the opinion that many, if not all, of the principles which I have submitted in this argument, have been already decided by this court, in the case of Thomas H. Baird, administrator of Dr. Absalom Baird, deceased, *vs. The United States*. The decision in that cause grazes the conclusion



to which I would bring the minds of your honors, if it does not meet it directly. In rendering this decision, the first question discussed by his honor, the chief justice, is, whether Dr. Baird, who was a surgeon in the corps of artificers, was entitled to the benefit of the resolution of October 21, 1780. Your honors decided that he was, for reasons fully stated, which I deem it, however, unnecessary to enumerate. That question clearly does not arise in the case at bar, but if the judgment of the court was correct in that respect, *a fortiori*, these petitioners, who were officers in the regular line, are entitled to claim under the resolution of October 21, 1780, in the absence of any valid and sufficient defence on the part of the Government, such as I have mentioned. And the second point decided by your honors, in Baird's case, is that Dr. Baird being entitled to the benefit of the resolution of October 21, 1780, his claim arising therefrom, was one which Congress had no power in law or equity to revoke by any subsequent legislation, just as I have argued before your honors in the case at bar. And third, that Dr. Baird was entitled to interest upon his half pay, to be computed on the amount due the first year after his reduction, and each successive year thereafter, and upon the aggregate amount of said principal and interest, to be computed from the period of his reduction up to the time when his claim was allowed by the judgment of this court, upon general principles of law and equity, and by virtue of the resolution of June 3, 1784, precisely as we claim in this petition. And fourth, that time was an important and material element in the contract of March 2, 1783, and that a failure on the part of the Government to comply with the terms of the substitute in this respect, was to be duly considered by your honors in the adjustment of the accounts of this nature, brought against it by the officers of the Revolution, a principle, as I have endeavored to show, most pertinent and material to the case at bar. And fifth, that none of the resolutions to which I have referred, in the nature of statutes of limitation, apply against the claim of Dr. Baird.

It is argued to be sure, that limitation did not apply in Dr. Baird's case, because his was "a continual fire," because he made repeated and constant applications to Congress. In the strong language of Mr. Ritchie, I believe it was, because he kept up a perpetual howl until a judgment in his favor by this court, and its payment by resolution of Congress, in conformity therewith, which was not done by any of the officers whom I represent on the present occasion. But, if your honors please, what difference can that make in a legal or equitable point of view? I have misapprehended the whole theory of the law upon this subject, if an application for a debt by the plaintiff, however often repeated and however warmly urged, can prevent the operation of the statute of limitation. To effect this object, there must be an acknowledgment of the debt by the de-



fendant, and, according to the modern decisions, an express acknowledgement, tantamount to a promise of future payment. Now, if your honors please, did Congress ever acknowledge Dr. Baird's right to half pay by virtue of the resolution of October 21, 1780, or promise to allow it? No; then, so far as limitation is concerned, upon general principles of law and equity, we occupy precisely the same position with him. Now, I am aware of the manner in which I will be met at this point; it will doubtless be said, and has indeed been intimated, that the resolution of Congress of February 12, 1793, requires that all cases against the Government should be presented to Congress by petition within a given time, and that Dr. Baird and his legal representatives took the precaution to bring themselves within this rule, in this respect differing from the officers whom I now represent. But, in reply, I would simply say, that if the views which I have already submitted are correct, it was not the intention of Congress for that resolution to apply to cases of this description, but only to cases which, in the opinion of Congress, were unsettled. If it be true that Congress considered these claims satisfied by the commutation certificates, and if it be further true that Congress has no power, upon principles of law and equity, to revoke a vested right, the conclusion to which I come upon this point, follows as a necessary and inevitable consequence.

But, the great and material point of difference between Dr. Baird's case and the case at bar, seems to be this: in the former, when the administrator of Dr. Baird received the commutation certificate, the Government owed his estate a debt exceeding even the nominal value of the certificate, and there was, therefore, in that case, in the opinion of the court, an attempt in the year 1836, on the part of the Government, to discharge this debt, by paying a part of the amount due, which, upon principles of law and equity, was only a satisfaction, *pro tanto*. Whereas, in the case at bar, there was, on the part of the Government, a satisfaction of a vested right to an annuity for life, upon which a very small amount of money exceeding the market value at the time, but much less than the nominal value of the commutation certificate had accrued and fallen due, by the payment of a certain sum in gross or a negotiable paper, equivalent to a certain sum in gross. Clearly, in this respect, the cases are materially different. It is true that you cannot discharge a debt by paying a part of the amount due, (this is one principle of law and equity,) and it is equally true, in my judgement, that one party to a contract cannot destroy the vested right to a life annuity arising therefrom, by the payment of a certain sum in gross, except with the free and voluntary consent of the other contracting party. This, I humbly submit, is another principle of law, and Congress, therefore, standing as it now does, in the attitude of party defendant, cannot legally revoke a vested



right to an annuity by any subsequent legislation, without the free and voluntary assent of the parties thus entitled. It is true that it may be done by compromise. But what sort of compromise? Let his Honor, the chief justice, answer this question for me. Aye, he has answered it already, in the decision rendered by him in the case of Dr. Baird. Mark his language, if your honors please: "by a fair and well-understood compromise, carried faithfully into effect." Was this a fair compromise, or was it not unjust and unequal upon its face? The fourteen petitioners who memorialized Congress in regard to the resolution of March 22, 1783, who were field officers and advanced in years, might very gladly exchange their life annuity for a certain sum in gross or a negotiable paper, which they considered equivalent to it, but it by no means follows that such an exchange was equally agreeable and advantageous to the younger officers of inferior rank, whom I represent, who had increasing families around them, and enjoyed the prospect of many years upon earth. Was this compromise well understood? It is not understood, it seems, at the present day, and has always been interpreted in different ways by the representatives of the nation. And the Solicitor for the Government, in his brief, appears to admit that the officers might have been mistaken in regard to its meaning, but he argues that a mistake in law is no excuse, and will not avail as a defence before a court of justice. This is doubtless true as a general proposition, but mistake of law is one thing, and ignorance or misapprehension of an arrangement intended as a compromise, is another. All the presumptions are, that the officers whom I represent did not understand it, because, as I have already said, they were on furlough at their respective places of abode when the resolution of March 22, 1783, was passed, and became the law of the land, and because the memorial, (and the only memorial before Congress relative to the subject) was prepared and presented by older officers of superior rank, residing at that time, in a different and distant section of the country, without their authority, knowledge, or consent. Was this compromise carried faithfully into effect? It was not, unless the history of the country relative to this matter is a sheer fabrication, and unless the authority of the best, and purest, and wisest men of their age—such as Madison, Heartly, and Boudinot—is to be regarded as the idle wind: and unless the whole mass of evidence to which I have referred your honors, relative to this point, is unworthy your confidence and attention. And I may further add, that the right of these officers to their respective claims for half pay, by virtue of the resolution of October 21, 1780, has been solemnly admitted by Congress itself, subsequent to the passage of the resolution of March 22, 1783, (by the act of May, 1828,) and that Congress has thereby conceded the conclusion to which my whole argument is directed. Nor am I without authority to



maintain this judgment, for I would beg leave to refer your honors to the opinions of Attorney General Butler, which I here insert. It is as follows:

The first section of the act of the 15th of May 1828, is in the following words:

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the surviving officers of the army of the Revolution in the continental line, who was entitled to half pay by the resolve of October 21, 1780, be authorized to receive, out of any money in the Treasury not othorwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the 3d day of March, 1826, and to continue during his natural life: Provided, that, under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.”*

On the face of this section we perceive that, instead of extending the bounty of the nation to a new class of invalids, or indigent persons, in the form of a pension, the law merely makes provision, for the satisfaction of an equitable claim on the justice of the Government, and carefully avoids any such expression as might connect it with the system of pensions then in force. The like distinction is recognised in the second and fifth sections; and still more emphatically in the third, which is in the following words:

SEC. 3. *And be it further enacted*, that every surviving non-commissioned officer, musician, or private, in said army, who enlisted therein for and during the war, and continued in its service until its termination, and thereby became entitled to receive a reward of eight dollars, under a resolve of Congress passed May fifteen, seventeen hundred and seventy eight, shall be entitled to receive his full monthly pay in said service, out of any money in the Treasury not otherwise appropriated, to begin on the third day of March, one thousand eight hundred and twenty six, and to continue during his natural life: *Provided*, That no non-commissioned officer, musician, or private, in said army who is now on the pension list of the United States, shall be entitled to the benefits of this act.”

Here, again, it is apparent that the payments directed by this section are granted, not as pensions gratuitously conferred, but for the purpose of providing an equitable equivalent for the reward promised in the resolve to which the section refers. And by referring to the debates, and other proceedings which accompanied the passage of the law, it will be seen that its enactment was advocated principally, if not exclusively, on this ground.

The only remaining section not quoted or alluded to, is the fourth which is as follows:

SEC. 4. *And be it further enacted*, That the pay allowed by



this act shall, under the direction of the Secretary of the Treasury, be paid to the officers or soldiers entitled thereto or to their authorized attorney, at such places and days as said Secretary may direct, and that no foreign officer shall be entitled to said pay ; nor shall any officer or soldier receive the same until he furnish to said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act. And the *pay* allowed by this act shall in no way be transferable, or liable to attachment, levy, or seizure, by any legal process whatever : but shall insure wholly to the personal benefit of the officer or soldier entitled to the same by this act."

In this section, and indeed throughout the whole act, we have the clearest indications that the pay then provided for was considered as entirely different from the pensions before granted ; and that it was intended by the Legislature to leave the selection of paying agents, if any should become necessary, to the Secretary of the Treasury, an officer who had no connexion whatever with the pension laws. They do not say (as had been done in the act of 1818) that the payments should be made in the same manner as pensions to invalids are now paid ; nor do they in any manner allude to the regulation on that subject then in force, but with full knowledge, as must be presumed, of the terms of the pension laws, and of the fact that the Bank of the United States was then employed as the pension agent, they place the whole subject under the direction of the Secretary of the Treasury.—(See opinions of the Attorney General of the United States, p. 926, 7.)

It seemed to be intimated that we were asking a *gratuity*—this reflection, for I esteem it such, with the permission of the court, I now take occasion indignantly to repudiate and deny—there is a living witness in this city who will testify, that some years ago he came into my office and urged me to unite in a petition soliciting Congress to make some provision for the liquidation of these claims, which I earnestly and indeed rudely refused to do—so rudely, that I afterwards felt it incumbent upon me to apologize for my manner. I appear before your honors in a strictly professional capacity, having been employed by gentlemen in this city of the first intelligence and highest respectability, whose confidence I have the good fortune to enjoy, to investigate this deeply interesting and important subject, and submit my reflections to the consideration of this tribunal. I appear before your honors holding in my hands a written contract, to which the national faith is pledged, to demand most respectfully, of course, a specific performance upon principles of law, equity and justice ; to ask a proud and wealthy debtor, with a bondless territory and an overflowing treasury, whom my client, aided in his extreme necessity, fairly and squarely to meet his honest debts ; to solicit a gratuity is one thing ; to demand my legal rights another ; to do the



former would be unmanly and dishonorable ; to do the latter is, at all times, and under all circumstances, a stern and solemn duty. A gratuity indeed ! the gallant men whom I represent on the present occasion, devoted their best days to their country's cause, nor did any one of them, within my knowledge, ever ask a gratuity, even in the shape of office, in return for their invaluable services. God grant that their descendants may follow their bright example ; that they may be ever ready to offer up their lives upon the altar of our common country whenever in the providence of Almighty God, the humble sacrifice may be required, and that whatever their course of life may be, they will never condescend to ask a gratuity of Congress. For one, I hope never to stoop so low, while my heart beats and my head is hot. " I would rather be a dog and bay the moon," than to solicit favors of any man or set of men. Then, if this cause is to depend for its success upon the whims of Congress ; for one, I say, let it sink to rise no more !—but if it is supported by principles of law and equity, we ask your judgment in our favor.